

REMARKS

Applicant is in receipt of the Final Office Action mailed June 11, 2009 in connection with this application. Applicant respectfully submits that the finality of the subject Office Action is premature and therefore requests withdrawal of that finality, pursuant to Section 706.07(d) of the Manual of Patent Examining Procedure (MPEP).

The Final Office Action rejected claims 1-8 on new grounds. Specifically, claims 1-8 were rejected under 35 U.S.C. 102(b) as being anticipated by British Patent No. 2158424 to Guala (“Guala”) for the first time.¹

In the Non-Final Office Action of November 10, 2008, claims 1-8 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement, and under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter. Claims 1-8 were not rejected by any of the prior art cited in the case.

In response to the Non-Final Office Action, claims 1-8 were amended in Applicant’s March 10, 2009 response to solely to correct the Section 112 objections raised by the Examiner. The patentable features of claims 1-8 were previously presented for examination. Thus, claims 1-8 could have been rejected under the prior art in an earlier Office Action but were not.

It has been well established that second or any subsequent actions on the merits shall be final, *except* where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement.. See Section 706.07(a) of the MPEP.

Applicant submits that because amendments to claims 1-8 were presented to overcome objections under Section 112 and the patentable features of the claims were present for examination in the preceding Office Action, the new ground of rejection of claims 1-8 made in the Final Office Action cannot reasonably be said to be either necessitated by a claim amendment. Furthermore, the Examiner did not take the position

¹ Only claims 9 and 10 were rejected under 35 U.S.C. 102(b) as being anticipated by Guala in the November 10, 2008 Office Action.

that Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action.

As the amendments to claims 1-8 were presented to address the Examiner's objections under Section 112, paragraphs 1 and 2, Applicant respectfully submits that the rejection of claims 1-8 as being anticipated by Guala should be presented in a Non-Final Office Action. Accordingly, Applicants respectfully request that the Examiner withdraw the finality of the June 11, 2009 Office Action.

As discussed supra claims 1-8, 9 and 10 have been rejected under 35 U.S.C. 102(b) as being anticipated by British Patent No. 2158424 to Guala ("Guala").

Claims 1 and 9 have been amended to recite an "unobstructed gap therebetween about the entire periphery of the outer part and the second portion." Guala does not disclose or suggest a "second portion, the outer part being movable relative to the inner part from a first position in which the outer part is immediately adjacent the second portion to a second position in which there is an unobstructed gap therebetween about the entire periphery of the outer part and the second portion," as recited in amended claim 1 or "a first portion outer part being movable relative to the inner part from a first position in which the outer part is immediately adjacent the second portion to a second position in which there is an empty, unobstructed gap therebetween about the entire periphery of the outer part and the second portion," as recited in amended claim 9.

This "unobstructed" gap according to the present invention is to prevent defeat of the tamper evidence by a simple cutting operation, as disclosed in the specification as originally filed. See, page 2, lines 16-18 of the Substitute Specification (page 3, lines 1-5 of the original disclosure). The gap therefore must be unobstructed by the locking mechanism in a way that prevents the locking mechanism from being removed by a simple cutting operation.

In contrast, as shown in Fig. 10 of Guala, as presented by the Examiner in the recent Office Action, the gap is only "unobstructed in the areas between each of the plurality of ratchets 38." See the Office Action, page 3. The gap(s) of Guala is not an "unobstructed gap therebetween about the entire periphery of the outer part and the second portion," as recited in amended claims 1 and 9. Accordingly, as Guala does not disclose or suggest the claimed subject matter, claims 1-10 are allowable.

In view of the foregoing, it is requested that the finality of the Office Action be withdrawn, the claims amended as set forth, and a Notice of Allowance issued. However, if any issue remains after considering this response, the Examiner is invited to call the undersigned to expedite the prosecution and work out any such issue by telephone.

Respectfully submitted,

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